

21 C.J.S. Courts § 215

Corpus Juris Secundum | May 2023 Update

Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

3. Extent of Precedential Effect of Decision

§ 215. Points actually decided

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The authority of a former decision as a precedent must be limited to the points actually decided on the facts before the court.

The authority of a former decision as a precedent must be limited to the points actually decided on the facts before the court.¹ Thus, a prior decision is not a binding precedent on points or propositions that were not raised in briefs or argument nor considered by the court or discussed in the opinion.² The court must have passed upon the precise question at issue,³ and questions that merely lurk in the record but were neither brought to the court's attention nor decided are not considered as having been so decided as to constitute precedent.⁴

CUMULATIVE SUPPLEMENT

Cases:

Judicial decision cannot create a precedent on an issue unless the issue was actually decided. [Confederacion Hipica de Puerto Rico, Inc. v. Confederacion de Jinetes Puertorriquenos, Inc.](#), 30 F.4th 306 (1st Cir. 2022).

A precedent that does not discuss standing or jurisdiction cannot be invoked as a precedent on standing or jurisdiction. [U.S. Const. art. 3, § 2, cl. 1. Aбраugh v. Altimus](#), 26 F.4th 298 (5th Cir. 2022).

A reported decision, although in a case where the question might have been raised, is entitled to no consideration whatever as settling, by judicial determination, a question not passed upon or raised at the time of the adjudication. [Howard v. Management & Training Corp.](#), 2022-Ohio-4071, 200 N.E.3d 1199 (Ohio Ct. App. 10th Dist. Franklin County 2022), appeal not allowed, 169 Ohio St. 3d 1458, 2023-Ohio-758, 2023 WL 2496946 (2023).

[END OF SUPPLEMENT]

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Footnotes

- 1 Cal.—[Santa Clarita Organization for Planning the Environment v. City of Santa Clarita](#), 197 Cal. App. 4th 1042, 129 Cal. Rptr. 3d 183 (2d Dist. 2011).

Ill.—[People ex rel. Schuler v. Chapman](#), 370 Ill. 430, 19 N.E.2d 351 (1939).

Ky.—[Drury v. Franke](#), 247 Ky. 758, 57 S.W.2d 969, 88 A.L.R. 917 (1933).

Utah—[State v. Salt Lake County](#), 96 Utah 464, 85 P.2d 851 (1938).

Wyo.—[State v. Underwood](#), 54 Wyo. 1, 86 P.2d 707 (1939).
- 2 U.S.—[U.S. v. L. A. Tucker Truck Lines, Inc.](#), 344 U.S. 33, 73 S. Ct. 67, 97 L. Ed. 54 (1952); [De La Paz v. Coy](#), 786 F.3d 367 (5th Cir. 2015).

Cal.—[People v. Avila](#), 38 Cal. 4th 491, 43 Cal. Rptr. 3d 1, 133 P.3d 1076 (2006), as modified, (Aug. 2, 2006).

Md.—[Brewster v. Woodhaven Bldg. and Development, Inc.](#), 360 Md. 602, 759 A.2d 738 (2000).

N.M.—[Maralex Resources, Inc. v. Gilbreath](#), 2003-NMSC-023, 134 N.M. 308, 76 P.3d 626 (2003).

Wash.—[Kucera v. State, Dept. of Transp.](#), 140 Wash. 2d 200, 995 P.2d 63 (2000).

Wis.—[Wieting Funeral Home of Chilton, Inc. v. Meridian Mut. Ins. Co.](#), 2004 WI App 218, 277 Wis. 2d 274, 690 N.W.2d 442 (Ct. App. 2004).
- 3 D.C.—[J.C. & Associates v. Board of Appeals and Review](#), 778 A.2d 296 (D.C. 2001).
- 4 U.S.—[Cooper Industries, Inc. v. Aviall Services, Inc.](#), 543 U.S. 157, 125 S. Ct. 577, 160 L. Ed. 2d 548 (2004); [KVOS, Inc. v. Associated Press](#), 299 U.S. 269, 57 S. Ct. 197, 81 L. Ed. 183 (1936); [De La Paz v. Coy](#), 786 F.3d 367 (5th Cir. 2015); [U.S. v. Knowles](#), 2016 WL 1295138 (8th Cir. 2016).

D.C.—[Schechter v. Merchants Home Delivery, Inc.](#), 892 A.2d 415 (D.C. 2006).

Wash.—[Anderson v. East Gate Temple Ass'n of Spokane](#), 189 Wash. 221, 64 P.2d 510 (1937).

Matters only treated by implication in an opinion, see § 218.